

ST 03-0193-GIL 12/19/2003 DELIVERY CHARGES

As a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always included in gross charges subject to tax. See 86 Ill. Adm. Code 130.410. (This is a GIL.)

December 19, 2003

Dear Xxxxx:

This letter is in response to your letter dated October 29, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is engaged in the business of direct selling candles and accessories through Independent Sales Consultants located in your state and throughout the country. Consultants are Independent Contractors who arrange to hold home demonstrations of ABC candles and accessories. These demonstrations take place in potential customers' home. These customers are referred to as Hostesses. At the conclusion of the home demonstrations the Orders are sent to ABC and fulfilled. The Orders are shipped to the Hostesses' home where she distributes the ABC products to the other guests who purchased items at the demonstration.

From time to time, we receive inquiries from our Independent Consultant and/or customers concerning the sales and use tax being charged on the shipping and handling associated to their Orders. All sales and use tax collected at this Show from customers is remitted to ABC who forwards the tax on to your state. At this time, ABC has instructed its Illinois Consultants that sales and use tax should be collected on the shipping and handling charges. Does this position accurately reflect your state's law? Or is it required that shipping and handling is deemed non-taxable for Illinois sales and use tax purposes?

I would very much appreciate it if you would clarify this sales and use tax issue for us as soon as possible so that ABC can appropriately respond to our Consultants and/or their customers and properly remit sales and use tax to your state.

A response to this inquiry can be forwarded to my attention at the address above. Thank you in advance for your prompt response to this inquiry.

As a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always included in gross charges subject to tax. See 86 Ill. Adm. Code 130.410. However, such charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling," as well as delivery or transportation charges in general, are not taxable if it can be shown that they are both separately contracted for and that such charges are actually reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the charges are subject to tax. As indicated above, charges termed "delivery" or "transportation" charges follow the same principle.

The best evidence that shipping and handling or delivery charges have been contracted for separately by purchasers and retailers are separate contracts for shipping and handling or delivery. However, documentation that demonstrates that purchasers had the option of taking delivery of the property, at the sellers' location for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. If retailers charge customers shipping and handling or delivery charges that exceed the retailers' cost of providing the transportation or delivery, the excess amount is subject to tax.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk